



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

August 21, 2017

President Helen G. Drinan
President's Office, C202
Simmons College
300 The Fenway
Boston, MA 02115

Re: Complaint No. 01-16-2113
Simmons College

Dear President Drinan:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Simmons College (College). OCR investigated whether the College discriminated against a student (Student) in the online Masters of Social Work program by failing to provide her with appropriate academic adjustments to accommodate her disability. Specifically, OCR investigated whether the College failed to provide appropriate academic adjustments when it refused to provide her extensions on papers and projects as an approved accommodation.

OCR investigated this allegation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation found at 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination based on disability in programs and activities operated by recipients of Federal financial assistance from the United States Department of Education (Department). The College receives Department funds and is subject to the requirements of Section 504 and its implementing regulations.

OCR gathered evidence through a review of documents and information provided by the Student and the College, as well as interviews with the Student and College employees. OCR determined that there was sufficient evidence to support a conclusion of noncompliance with Section 504 with regard to the College's treatment of the Student. It also found evidence of broader noncompliance in the College's practices and procedures. As explained below, the College has agreed to enter into a Resolution Agreement to address the compliance violations that OCR identified during its investigation. OCR's investigation and findings are summarized below.

Legal Standard

The Section 504 regulations, at 34 C.F.R. § 104.3(j)(1)(i), define an individual with a disability as one who has a mental or physical impairment that substantially limits one or more major life

activities. Under the Section 504 regulations, at 34 C.F.R. § 104.3(l)(3), with respect to postsecondary education services, a qualified individual with a disability is one who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity. The Section 504 regulations, at 34 C.F.R. § 104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient.

The Section 504 regulations, at 34 C.F.R. § 104.44(a), require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued, or to any directly related licensing requirement, will not be regarded as discriminatory.

Under the requirements of Section 504, in order to receive accommodations at the postsecondary level, a student with a disability is obligated to notify the recipient of the nature of the disability and the need for a modification, adjustment, aid or service. Once a recipient receives such notice it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the recipient may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

Factual Findings

The College's Policy on Granting Extensions on Papers and Projects as an Accommodation

As of the spring semester 2016, the College had a blanket policy pursuant to which no students could have "extended time for papers and projects" as an accommodation.¹ When interviewed by OCR, the Director of the Disability Services Office (DSO) stated that the College did not grant across the board extensions and he could not recall any time in which the College had approved "extended time for papers and projects" in a student's accommodations letter. The (b)(6); (b)(7)(C) the only other person in that office responsible for determining accommodations, confirmed this practice. She stated that the College did not offer extensions for papers and projects because, in certain classes, such extensions might alter the fundamental nature of a course. No one at the College would examine the requirements of the individual class, or consult with the instructor, to determine if such extensions would alter the fundamental nature of the course. Rather, because such extensions might have, in some cases, altered the fundamental nature of the course, no student was granted the accommodation in any course.²

¹ However, the College did offer and allow extra time *on quizzes and exams* as an accommodation.

² Although the College did not undertake a course-by-course analysis with regard to this accommodation, it did have a procedure for determining whether an accommodation or modification altered an essential

According to both the Director of the DSO (Director) and (b)(6); (b)(7)(C) instead of offering the accommodation, the College encouraged students to talk with their professors prior to the deadline, to see if they might be amenable to short extensions on some papers or projects. Both the Director and (b)(6); (b)(7)(C) also stated that if the professors were not amenable to extensions, the students could come back to them for more assistance, which could involve having someone from DSO speak to the professor directly. However, the accommodation would have never been formally listed in the student's letter.

During the course of OCR's investigation, on October 12, 2016, the (b)(6); (b)(7)(C) for the College circulated a memorandum acknowledging its practice of automatically assuming that certain academic adjustments would fundamentally alter the essential requirements of a course of program, and clarifying that the College should not make such an assumption absent an assessment of the individual student and the individual course.

The College's Treatment of the Student

The Student began the online, accelerated Masters of Social Work program at the College in January 2016. According to the Student, she first contacted the DSO at the end of January 2016. She informed OCR that she called twice and left messages with the DSO, though her calls went unreturned. It was not until her third attempt that she reached a person who scheduled an appointment for her to meet with the Director.

Both the Student and the Director report speaking to each other on February 16, 2016. The Student then submitted documentation to the DSO in late February, the (b)(6); (b)(7)(C) and the Director met to determine the Student's accommodations, and the Director and the Student spoke again on March 9, 2016.

While they agreed on the time frames of the two phone calls, the Student and the Director had somewhat different recollections of the substance of these calls. It is undisputed is that the Director told the Student that the College did not offer extensions on papers and projects as an accommodation.

However, the Student recalled also being told that she should write to her professors, mention that she was registered with DSO, and that DSO's policy did not cover extra time on papers and projects, but that she might need extra time. She did not recall being told that she could come back to DSO for assistance if a professor would not provide an extension; rather, she felt she was being told that DSO had done all it could do and she was on her own with regard to her professors. In contrast, the Director recalled modeling how to have a conversation with faculty regarding extensions on assignments and inviting her to talk with the Director again if she had problems. The Director took notes of each call with the Student. Those notes state that the Director said DSO does not approve extensions on papers and projects, that he discussed how other students had successfully advocated for themselves to receive accommodations, and

requirement of a course. The procedure is documented in a publication entitled "Core Curriculum" and also referred to elsewhere as "Suggested Guidelines for Determining Essential Components of a Course or Program." While the document was previously available on the College's website, the College reported that it was inadvertently omitted during updates to the site and, therefore, not publicly available during the 2016 Spring semester.

explained the “conversation that a student can have with the course instructor to request extensions on a case by case basis.” The notes are silent as to whether or not the Director told the Student that she could seek further assistance from the DSO if a professor would not grant an extension.³

The Student did not contact DSO again until May 2, 2016, when she learned that she was being dismissed from the program. Further, no one from DSO contacted the Student during the semester.⁴

One of the courses in which the student was enrolled was (b)(6); (b)(7)(C) Course. The (b)(6); (b)(7)(C) Course had three graded components: a live session, asynchronous instruction, and a paper. The paper encompassed three assignments in one: first, students submitted what was essentially the introduction (First Paper); then, students submitted the literature review with references (Second Paper); and, finally, the first two writings were combined, with some additional material, into the last submission (Third Paper).

The Second Paper was due March 2, 2016. On February 29, 2016, the Student emailed the professor for the course (Professor) and requested an extension to the weekend (i.e., March 5 or 6, 2016). In that email, the Student mentioned that she was in the process of registering with the DSO. The Professor responded that same day and said that she understood.

On Wednesday, March 9, 2016, the Student emailed the Professor again asking for additional time. The Professor did not respond until Tuesday, March 15, 2016 when she said that she would accept the paper through the next day, Wednesday, March 16, 2016 at 9 a.m. EST. However, she also said that she would “need to assess a penalty” that “may well result in a total grade that is too low for you to move forward, depending on your performance for the remainder of the class.” The Student responded that same day, writing that she did not think she could submit the paper in such a short amount of time. She mentioned that the DSO would be sending the Professor a list of approved accommodations, but that it did not cover extensions. She also stated that she was not sure she saw the utility of completing an assignment if she would fail the course regardless. The Professor responded that she did not think it “fair, or even useful” to give open-ended extensions because the Third Paper was built upon the Second Paper. She asked the Student how much additional time she thought she needed and proposed Friday, March 18, 2016 at 5 p.m. EST as a new deadline.

³ The Student reported that she felt from the Director’s phrasing that extra time for papers and projects might be available in the on-campus program, and was only unavailable for the online program. OCR found no evidence to support this. There appears to be no dispute that the extra time accommodation was not available regardless of the program.

⁴ The College has an appeals process through which a student can appeal the DSO’s determination regarding requested accommodations. See Grievance of Accommodations, <https://www.simmons.edu/~/media/Simmons/Student-Life/Disability-Services/Documents/Grievance-Policy-and-Procedure-pdf.ashx?la=en> (last visited August 14, 2017). There is no dispute that the Student did not appeal the DSO’s determination. However, given that the Student understood such extensions were not available as a matter of policy, and the DSO’s confirmation of said policy, such an appeal would have been futile.

The Professor emailed again on Friday morning, March 18, 2016 advising the Student that she had not received a response to her email. The Student replied the same day saying she would not be able to submit the paper by the March 18 deadline, but that she could submit it by 8:00 a.m. PST on Monday, March 21, 2016. The Professor responded on Sunday, March 20, 2016, stating that the paper would receive a failing grade for lateness, but she still encouraged the Student to submit it. She also said that she would consider offering the student make-up assignments that could count towards the failing grade.

On March 30, 2016, the Student submitted an outline of the final paper. She acknowledged in her email to the Professor that there was still much work to be done. The Professor did not grade this submission because, according to the Professor, it was not a paper and not responsive enough to the grading rubric for her to assign a grade. The Professor did not provide any feedback to the Student on this submission.

Although the Student continued to attend and participate in the live sessions and complete the asynchronous instruction, she did not submit a final paper. The Student informed OCR that she had gotten no feedback on the outline, felt overwhelmed and hopeless, and believed the Professor had already told her that she would fail the course so she did not see any reason to complete it.

The Professor reported that she followed her standard approach to extensions when working with the Student. She did not treat the Student any differently than she would have treated a student without a disability. Also, while she knew the Student was registered with DSO, she did not know the nature of the Student's disability or how it might affect her ability to complete work on time.

Part of the Professor's standard approach to extensions was her general practice of deducting points for assignments. While she does not employ an exact formula, the Professor said she usually deducts "a couple" percentage points if an assignment is a few hours late, five points if an assignment is a day late, and a letter grade if the assignment is a week late. She was following this standard approach when discussing with the Student how lateness would affect her grade on Paper 2 and the resulting impact on her ability to pass the course. The Student reported that she was aware her grade was dropping every day she could not complete the assignment.

The Student ultimately failed to submit the Second Paper, which was worth 25% of her course grade, and the Third Paper, which was worth 30%. This led to her failing the class and being dismissed from the program.⁵

Analysis

The College's Policy Regarding Extensions on Papers and Projects

In determining what modifications are appropriate for a student with a disability, the recipient should familiarize itself with the student's disability and documentation, explore potential

⁵ According to the Handbook of MSW Policies & Academic Guidelines and interviews with various College personnel, if a student fails one class, or has three B-minuses or lower, they are dismissed from the program.

modifications, and exercise professional judgment. Whether a recipient has to make modifications to its academic requirements or provide auxiliary aids is generally determined on a case-by-case basis. Section 504 contemplates a meaningful and informed process with respect to provision of accommodations, e.g., through an interactive and collaborative process between the school and the Student.

Here, the College had a blanket policy of not providing extensions on papers and projects. This policy obviated any individualized assessment of the Student's needs or the requirements of the course, and effectively ended the interactive process, thereby discriminating against, and excluding a student with a disability from the education program in which she was enrolled. Such a policy does not meet the requirements of Section 504 at 34 C.F.R §§ 104.43 and 104.44.

The DSO apparently adopted its policy because it believed such extensions would fundamentally alter the nature of courses. While there may be courses for which an extension is a fundamental alteration, such a determination must be made on a course-by-course basis as part of an individualized assessment.

The Resolution Agreement requires that the College's policy is revised and that the blanket policy prohibiting extensions on papers and projects as an accommodation is discontinued.

The College's Treatment of the Student

The College also violated the requirements of Section 504 when it applied its blanket policy regarding extensions to the Student. Although the College contends that the Student was afforded a number of extensions and was effectively provided with the accommodation through the extensions from the Professor, OCR's investigation revealed that the extensions were not accommodations as mandated by Section 504. The Student's process of requesting an extension from her Professor varied significantly from how the interactive process should work. Requiring students to request accommodations for their disabilities directly from their professors places them in the difficult and unfair position of having to negotiate for their accommodations with the persons who are ultimately responsible for evaluating and rating their academic performance. Such a process also puts professors in the unfair position of having to provide accommodations when they are not trained in such decision-making and do not have complete information about the student's needs. Individuals appropriately qualified to assess and address the needs of students with disabilities, such as the professionals of a disability services office, should serve as intermediaries between students and faculty so that students are not placed in a position of having to reveal confidential information regarding the nature or extent of their disability and to discuss/negotiate accommodations with their instructors.

OCR's investigation revealed that while the Professor was aware the Student had a disability, the Professor was unfamiliar with the details. Moreover, even if she had been aware of such details, the Professor lacked the expertise or experience to evaluate the Student's needs. While a Student may provide notification of her disability to a Section 504 or ADA coordinator, an appropriate dean, a faculty advisor, or professor, the ultimate determination regarding adjustments or modifications should be made by someone with knowledge of the student's disability and who is properly trained in determining appropriate adjustments or modifications, e.g., the Director.

Further, the Professor stated that she handled the Student's requests for extensions just as she would for a student who did not have a disability. She did not consider any additional factors when deciding whether to grant the extension. The Professor stated that she would penalize the Student's grade in the same manner she penalized work deemed to have been submitted late by students without disabilities. The Professor also stated that the Student would be able to make up for the late work by doing additional assignments. A true accommodation for a disability would not result in a grade penalty or additional work. In this instance the College did not provide an accommodation under Section 504 because it did not make an individualized inquiry into the needs of the Student and treated the Student the same as any other student without a disability. The offers of extensions accompanied by penalties and conditioned on the performance of additional work were therefore not accommodations for the Student's disability, and the College's treatment of the Student was not in compliance with Section 504.

The Resolution Agreement requires that the Student is made whole and that the effects of the College's failure to provide her with appropriate academic adjustments are otherwise remedied.

Conclusion

For the reasons explained above, OCR determined that there was sufficient evidence to support a conclusion of noncompliance with Section 504 with respect to: (i) the College's blanket policy regarding extensions on papers and projects as an accommodation, and (ii) the College's provision of accommodations to the Student.

As provided above, after OCR notified the College of its conclusion, the College entered into a resolution agreement (Agreement) that, when fully implemented, will resolve these issues.

Pursuant to the Agreement, the College will: (1) create a policy for providing extensions for papers and projects as an accommodation and effectively train its employees on the implementation of that policy,⁶ and (2) remove from the Student's transcript the two grades that were lowered due to the College's failure to provide the accommodation, and refund the Student's tuition for these two courses.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed herein. OCR will notify the Student concurrently.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Student may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Student may file another complaint alleging such treatment.

⁶ As described above, the College has already taken steps towards such policy revisions during the course of this investigation.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR thanks the College for its cooperation throughout the investigation. If you have any questions, please contact Civil Rights Attorney Catherine Deneke at (617) 289-0080 or Catherine.Deneke@ed.gov.

Sincerely,

(b)(6); (b)(7)(C)

Meena Morey Chandra
Acting Regional Director *W/P AMM*

Enclosure



RESOLUTION AGREEMENT

Simmons College
OCR No. 01-16-2113

The U. S. Department of Education, Office for Civil Rights (OCR) and Simmons College (College) enter into this agreement to resolve the allegation of discrimination on the basis of disability contained in complaint number 01-16-2113 filed with the U.S. Department of Education, Office for Civil Rights (OCR). The College assures OCR that it will take the following actions to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance.

Action Item 1

By August 15, 2017, the College will create a policy consistent with 34 C.F.R. § 104.44 to ensure that the needs of students are assessed on an individual basis, and that the College does not maintain a blanket prohibition on extensions on papers and projects as an accommodation. The College will also ensure that the employees of its Disability Services Office are adequately trained regarding the new policy.

Reporting Requirements

- a. By August 15, 2017, the College will submit its new or revised policy to OCR for OCR's review and approval.
- b. Within 30 days of OCR's approval of the new or revised policy the College will circulate the policy to all students currently registered with the Disability Services Office and to all College personnel, and make the policy publicly available on its website.
- c. Within 14 days of said circulation, the College will provide OCR with proof of its compliance with Action Item 1, Reporting Requirement b.
- d. Within 45 days of OCR's approval of the new or revised policy, the College will provide documentation to OCR sufficient to show that the employees of its Disability Services Office have been adequately trained regarding the new policy.

Action Item 2 – Individual Remedies

By September 30, 2017, the College will provide remedies to the individual student. Specifically, the College will remove from her transcript the two courses for which she had lower grades because she was not provided an extension for papers and projects (i.e. (b)(6); (b)(7)(C))

and [redacted] (b)(6); (b)(7)(C) and refund the Student's tuition for those courses. In order to accomplish Action Item 2, the College has agreed to return to the U.S. Department of Education the Federal Student Aid received by the individual student to pay for the two courses in question. This will necessarily require a recalculation of the individual student's total aid package for the financial aid year in question, pursuant to Federal Student Aid requirements, and this recalculation may leave an outstanding balance owed to the College, which would be less than the amounts refunded. In that instance, the College will provide an accounting to the individual student showing the refunded amount along with an invoice for any unpaid balance.

Reporting Requirements

- a. By September 30, 2017, the College will submit to OCR proof of its compliance with Action Item 2.

The College understands that by signing this Agreement, it agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the College understands that during the monitoring of this Agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this Agreement and is in compliance with Section 504 and its implementing regulation at 34 C.F.R. §104.21. Upon completion of the obligations under this Agreement, OCR shall close and dismiss this case.

The College understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement. Before initiating administrative enforcement (see 34 C.F.R. §§ 100.9, 100.10, which are incorporated into the Section 504 regulation at 34 C.F.R. §104.61), or judicial proceedings to enforce this Agreement, OCR shall give the College written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the University's representative below.

7-21-17

Date

[redacted] (b)(6); (b)(7)(C)

[Gretchen Groggel Ralston]
Simmons College



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

December 8, 2017

Helen G. Drinan
President
Simmons College
300 The Fenway
Boston, MA 02115

By email to: helen.drinan@simmons.edu

Re: Complaint No. 01-17-2091
Simmons College

Dear President Helen Drinan:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Simmons College (the College) alleging disability discrimination. The Complainant alleged that certain of the pages on the College's website are not accessible to persons with certain disabilities, including but not limited to vision impairments. These websites include but are not limited to:

- Visit Simmons at <http://www.simmons.edu/admission-and-financial-aid/undergraduate-admission/visit>
- Student Financial Services at <http://www.simmons.edu/admission-and-financial-aid/student-financial-services>
- Financial Aid at <http://www.simmons.edu/admission-and-financial-services/financial-aid>
- Veterans Benefits at <http://www.simmons.edu/admission-and-financial-services/financial-aid/veterans-benefits>
- Homepage at <http://www.simmons.edu>
- Making a Career Change video at <http://www.youtube.com/user/simmonscollege>
- What's Life like at Simmons at <http://www.simmons.edu/student-life-at-simmons/life-in-boston>
- Student Services at <http://www.simmons.edu/student-life/student-services>
- Disability Services at <http://www.simmons.edu/student-life/student-services/disability-services>
- Services for Students with Children at <http://www.simmons.edu/student-life/student-services/for-students-with-children>
- Technology Support at <http://www.simmons.edu/student-life/student-services/technology-support>
- Facebook at <http://www.facebook.com/simmonscollege>

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

OCR is responsible for enforcing this complaint pursuant to our jurisdiction under Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the Department. The University is a recipient of financial assistance from the Department. Therefore, OCR had jurisdictional authority to investigate this complaint under Section 504.

As explained further below, before OCR completed its investigation, the College expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement

Legal Standards

Section 504 prohibit people, on the basis of disability, from being excluded from participation in, being denied the benefits of, or otherwise being subjected to discrimination by recipients of federal financial assistance or by public entities. 34 C.F.R. § 104.4. Individuals with disabilities must have equal access to recipients' programs, services, and activities unless doing so would fundamentally alter the nature of the programs, services, or activities, or would impose an undue burden. Section 504 prohibits affording individuals with disabilities an opportunity to participate in or benefit from aids, benefits, and services that is unequal to the opportunity afforded others. 34 C.F.R. § 104.4(b)(1)(ii). Similarly, individuals with disabilities must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or the same level of achievement as others. 34 C.F.R. § 104.4(b)(2). An individual with a disability, or a class of individuals with disabilities, may be provided with a different or separate aid, benefit, or service only if doing so is necessary to ensure that the aid, benefit, or service is as effective as that provided to others. 34 C.F.R. § 104.4(b)(1)(iv). In sum, programs, services, and activities—whether in a “brick and mortar,” on-line, or other “virtual” context—must be operated in ways that comply with Section 504.

Factual Background

To date, OCR has investigated this complaint by reviewing the information the Complainant provided and conducting a preliminary assessment of the accessibility of several pages from the College's website.

The complaint alleges that the College's website is not in compliance with Section 504 because it is inaccessible to individuals with vision disabilities, print disabilities, physical impairments, and hearing impairments. The Complainant used website accessibility checkers (PowerMapper and WAVE) and reported to OCR that the College's webpages listed above have accessibility issues for individuals with disabilities. The Complainant then provided OCR with a list of errors copied and pasted from the website accessibility checker that she used.

OCR conducted a preliminary examination of the College's websites you referenced, and found possible compliance concerns as to whether the College's website is accessible to individuals with disabilities. A brief of the College's website showed that the College's websites described

above continued to lack features required by the applicable web accessibility guidelines, such as skip navigation tools, lacked visible keyboard navigation controls, and that tabbing or using arrow keys did not access all website content, and low contrast errors remained.

Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the College expressed an interest in resolving this complaint. Subsequent discussions between OCR and the College resulted in the College signing the enclosed Agreement which, when fully implemented, will resolve the issues raised in this complaint. The terms of the Agreement are aligned with the complaint allegation and are consistent with the applicable laws and regulations. OCR will monitor the College's implementation of the Agreement and continue to do so until it has determined that the College has complied with the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Civil Rights Attorney James Moser at (617) 289-0146 or by e-mail at james.moser@ed.gov.

Sincerely

(b)(6); (b)(7)(C)

Meena Morey Chandra w/p AMM
Acting Regional Director

Enclosure

cc: Phil Catanzano, Esq.
by email to: Phil.Catanzano@hklaw.com

RESOLUTION AGREEMENT
Simmons University
OCR Complaint No. 01-17-2091

The U.S. Department of Education, Office for Civil Rights (OCR), initiated an investigation into allegations that Simmons University (the University) violated Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104. Specifically, the complainant alleged that the University's website contained barriers to access for people with disabilities, thereby denying them an equal opportunity to participate in the University's online programs, services, and activities.

Prior to the completion of OCR's investigation, the University agreed to resolve the issues of this investigation pursuant to Section 302 of OCR's Case Processing Manual. This resolution does not constitute an admission that the University is out of compliance with Section 504 and/or its implementing regulation, nor does it constitute a determination by OCR that the University has violated any of the laws that OCR enforces. Accordingly, to ensure compliance with Section 504 and its implementing regulation and to resolve the issues of this investigation, the University agrees to take the actions set forth below.

Assurances of Nondiscrimination. The University hereby reaffirms its commitment to ensure that people with disabilities have an opportunity equal to that of their nondisabled peers to participate in the University's programs, benefits, and services, including those delivered through electronic and information technology, except where doing so would impose an undue burden or create a fundamental alteration.

Benchmarks for Measuring Accessibility. Solely for the purposes of this Agreement, the accessibility of online content and functionality will be measured according to the W3C's Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and the Web Accessibility Initiative Accessible Rich Internet Applications Suite (WAI-ARIA) 1.0 for web content, which are incorporated by reference.

Adherence to these accessible technology standards is one way to ensure compliance with the University's underlying legal obligations to ensure people with disabilities are able to acquire the same information, engage in the same interactions, and enjoy the same benefits and services within the same timeframe as their nondisabled peers, with substantially equivalent ease of use; that they are not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any of University programs, services, and activities delivered online, as required by Section 504 and its implementing regulation.

Remedies and Reporting Requirements

- 1) **Creation of a Task Force to Develop a Strategic Action Plan.** Within sixty (60) days of entering into this Agreement, the University will develop a Task Force made up of qualified members of the University community to develop a detailed Strategic Action Plan to (A) review (and revise, as necessary) its policies and procedures designed to address all new online content and functionality, (B) set up a system to review and ensure

the accessibility of its critical and highly utilized online content, (C) develop a process to ensure that, upon request, inaccessible content will be made accessible in an expedient manner and consistent with the terms of this Agreement, and (D) develop and deliver website accessibility training. The Strategic Action Plan will also include opportunities for individuals accessing the University online environment to report barriers to accessibility and usability. To the extent that students and/or individuals with disabilities are not included on the Task Force, they will be consulted by the Task Force in the creation of the Strategic Action Plan. The University will share this Strategic Action Plan with OCR no later than February 15, 2018, or 60 days after the execution of this agreement, whichever is later.

- 2) **Proposed Policies and Procedures Regarding New Online Content and Functionality.** Within sixty (60) days of submitting the Strategic Action Plan to OCR, the University will submit to OCR for its review and approval proposed policies and procedures to ensure that all new, newly-added, or modified online content and functionality will be accessible to people with disabilities as measured by conformance to the Benchmarks for Measuring Accessibility set forth above, except where doing so is technically infeasible, would impose a fundamental alteration or undue burden, or would interfere with academic freedom.
 - a) When fundamental alteration or undue burden defenses apply, or where academic freedom is implicated, or where compliance with the Benchmarks for Measuring Accessibility is not technically feasible, the University will follow federal legal requirements to provide effective alternative access. In providing equally effective alternate access, the University will take any reasonable actions that do not result in a fundamental alteration or undue financial and administrative burdens to ensure that individuals with disabilities receive the same benefits or services as their nondisabled peers. To provide equally effective alternate access, alternate access is not required to produce the identical result or level of achievement for persons with and without disabilities, but must afford persons with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.
 - b) Within thirty (30) days of receiving OCR's approval, the University will officially adopt, and fully implement the amended policies and procedures, in keeping with the timelines specified in the Strategic Action Plan.
 - c) **Reporting:** Within forty-five (45) days of receiving OCR's approval, the University will submit to OCR the approved policies and procedures, evidence of their adoption and distribution, and a description of how they are being implemented.
- 3) **Undue Burden and Fundamental Alteration.** For any technology-related requirement in this Agreement for which the University asserts an undue burden, fundamental alteration, or technical infeasibility defense, such assertion may only be made by the Chief Information Officer/Vice President for Administration or Cabinet-level designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for

reaching that conclusion, including the cost of meeting the requirement and the available funding and other resources. If such a determination is made, the University will describe in the written statement how it will provide equally effective alternate access, *i.e.*, other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the same benefits or services provided by the University as their nondisabled peers. These files will be maintained by the Office of Disability Services.

- 4) **Assessment of Existing Content and Functionality.** The Strategic Action Plan will define a detailed approach to ensure that its existing content is appropriately updated to reflect the needs of the community and other users. The University will strive to make its critical and highly utilized online content, including the pages referenced by the complainant, fully accessible within twelve (12) months. For all other content, the University currently works extremely hard to ensure that its community understands that any accessibility concerns are remedied appropriately and expediently. The University will further publicize these efforts and will seek to provide a dedicated accessibility and usability reporting mechanism on new and existing web content via an institutional template. This accessibility and usability reporting tool, as well as related accessibility mechanisms, will be shared with the University community via email and on the University website for all to view.
- 5) **Training.** Starting no later than April 2018, and annually thereafter, the University will deliver website accessibility training concerning, among other things, the goals and strategies set forth in the Strategic Action Plan to all appropriate personnel, including, but not limited to: content developers, webmasters, procurement officials, and all others responsible for developing, loading, maintaining, or auditing web content and functionality. The training will include information about how to comply with the Benchmarks for Measuring Accessibility set forth above.
- 6) **Summary Reporting:** Given the ongoing nature of ensuring web accessibility on the University's campus and the extensive amount of new online content that will be created and assessed each academic year, the Strategic Action Plan will incorporate specific benchmarks, including timeframes, and internal evaluation efforts that the University will implement on an ongoing basis moving forward. The University will provide to OCR a Summary Report of its efforts to effectuate this Agreement and these ongoing efforts to maintain web accessibility on campus by the beginning of the 2019-2020 academic year. The University will meet and consult with OCR following the submission of this Summary Report and agrees to provide upon request further information to satisfy any specific concerns OCR may raise at that time and until OCR closes the monitoring of this Agreement.

The University understands that OCR will not close the monitoring of this Agreement until OCR determines that the University has fulfilled the terms of this Agreement in compliance with the regulations implementing Section 504, at 34 C.F.R. §§ 104.4 (a) and (b), which were at issue in this case. The University understands that OCR will be under no legal obligation to close its monitoring as of any specific date. However, within thirty days (or a similarly reasonable timeframe) after the University submits its Summary Report, and assuming that

OCR in good faith does not raise specific compliance concerns with regard to any reporting obligations set forth in this Agreement, there will be a rebuttable presumption that OCR will close its monitoring of the University and this Agreement at that time.

The University also understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the University understands that during the monitoring of this Agreement, if necessary, OCR may request such additional reports or data as is relevant and necessary for OCR to determine whether the University has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. §§ 104.4 (a) and (b), which were at issue in this case.

The University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

The Agreement will become effective immediately upon the signature of the University's representative below.

(b)(6); (b)(7)(C)

General Counsel
Simmons University

12/7/17
Date